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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/359,838	07/23/1999	STANLEY E. KAY	PD-990149	3345

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HUGHES ELECTRONICS CORPORATION  
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EXAMINER

NGUYEN, STEVEN H D

ART UNIT PAPER NUMBER

2665

DATE MAILED: 12/11/2003

9

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/359,838

Applicant(s)

KAY ET AL.

Examiner

Steven HD Nguyen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 22 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-45 is/are pending in the application.
- 4a) Of the above claim(s) 1-39 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 40-45 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. §§ 119 and 120**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election with traverse of Group II in Paper No. 9 is acknowledged. The traversal is on the ground(s) that the claimed has examined by Mr. Michael Robustelli. This is not found persuasive because the claims are clearly divided into two invention as stated in the restriction and classified into different classes. Therefore, it is burdened for the examiner to perform the search.

The requirement is still deemed proper and is therefore made FINAL.

2. This application contains claims 1-39 drawn to an invention nonelected with traverse in Paper No. 8. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

### ***Claim Rejections - 35 USC § 101***

3. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

4. Claims 40-45 are rejected under 35 U.S.C. § 101 because the claims are directed to an arrangement of data or information per se that do not fall within any of the four categories of statutory subject matter of 35 U.S.C. § 101.

The claimed data format is clearly not a process because it is not a series of steps. The other three § 101 classes of machine, compositions of matter and manufactures can be group as product claims, and the product classes have required physical structure or material. The claimed data format does not itself perform any useful concrete and tangible result, i.e., no post

solution activity, and thus does not fit within the definition of a machine. In addition, the claimed data format is an abstract construct; therefore, the claimed data format does not fall within the product classes, machine and composition of matter.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 40 and 45 are rejected under 35 U.S.C. 102(e) as being anticipated by Nasuda (USP 5936546).

Nasuda discloses (Figs 1-2 and col. 1, lines 30 to col. 3, lines 40) a method for transmitting a traffic burst comprising a preamble portion including a data/spare second between a first unique word and a second unique word wherein the data/spare defines a preamble split length for storing data (See Fig 2, Ref 30 is preamble includes Ref 33 is data for identifying if ref 34 is 2 or 4 level and Ref 33 is between Ref 32 and 34; See col. 2, lines 30-43) and a data portion following preamble portion contains data (Fig 2, Ref 31).

7. Claims 40 and 45 are rejected under 35 U.S.C. 102(e) as being anticipated by Oliboni (USP 5974086).

Oliboni discloses (Figs 1-2 and col. 1, lines 15 to col. 7, lines 30) a method for transmitting a traffic burst comprising a preamble portion including a data/spare second between

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a first unique word and a second unique word wherein the data/spare defines a preamble split length for storing data (See Fig 4, Ref 404, 406 and 408 is preamble includes data portion "Ref 406" is between Ref 404 and 408; See col. 2, lines 30-43) and a data portion following preamble portion contains data (Fig 2, Ref 410).

***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

10. Claim 41 is rejected under 35 U.S.C. 103(a) as being unpatentable over Nasuda or Oliboni in view of Kolze (USP 6285681).

Nasuda or Oliboni does not fully disclose the claimed invention. However, in the same field of endeavor, Kolze discloses a postamble which is following the data portion includes a parity bit (Fig 2, Ref 42).

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Since, the use of parity bit is well known and expected in the art. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to apply a parity bit after data portion as disclosed by Kolze into the system of Nasuda or Oliboni. The motivation would have been to perform error check.

11. Claims 42-44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nasuda or Oliboni in view of Gardner (USP 6038455).

Nasuda or Oliboni does not fully disclose the claimed invention. However, in the same field of endeavor, Garner discloses Guard preceding first unique word; RAMP preceding first unique and next to guard and first and second unique word are less than 16 symbols (See col. 16, lines 20-39).

Since, the use of Guard and RAMP in front of preamble are well known and expected in the art. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to apply Guard and RAMP field as disclosed by Gardner into the system of Nasuda or Oliboni. The motivation would have been to prevent interference between the signals.

### ***Conclusion***

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Yoshida (USP 6035222) discloses a method and apparatus for inserting data into preamble field.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven HD Nguyen whose telephone number is (703) 308-8848. The examiner can normally be reached on 8-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Huy D Vu can be reached on (703) 308-6602. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9314.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-4700.

A handwritten signature in black ink, appearing to be 'SHN', with a long horizontal line extending to the right.

Steven HD Nguyen  
Primary Examiner  
Art Unit 2665  
12/08/03